VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal: proposal seeking deletion of the assessment; appeal dismissed.

APPEAL NUMBER:	CHG100846480
RE:	Chiquito, Portway, Preston, Lancashire, PR2 2YB (the "appeal property")
BETWEEN:	Mr Arnold Berman — Appellant and Joanne Moore Valuation Officer — Respondent
SITTING:	*remotely using Microsoft Teams*
ON:	12 November 2024
BEFORE:	Ms TM Blades, Presiding Senior Member Mrs B Dhoofer-Sagoo, Senior Member
CLERK:	Mrs D Davies IRRV(Hons) BA (Hons)
APPEARANCES:	Mr Ken Batty, Chartered Surveyor, appellant's representative as advocate and expert witness Mr Peter Duffield, respondent Valuation Officer's representative as advocate Mr Steve Jones, respondent's expert witness

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The panel found that:

    a) the subject property was capable of beneficial occupation on the material day and therefore it remained a hereditament; and
    b) the hypothetical landlord would consider the costs of repairs reasonably economic to undertake.

Introduction

3. This is a 2017 rating list appeal. The appeal property has been entered in the 2017 list as a restaurant and premises, RV £76,000. The appellant is seeking the deletion of the appeal property's list entry with effect from 1 April 2021.

4. The valuation officer determined the challenge to be not well-founded and so the appellant appealed to this tribunal. The appeal was lodged on 19 February 2024, but at that stage Mr Batty advised that he was seeking an amended decision from the VO. No additional decision was received, and the appeal was acknowledged on 17 May 2024. Prior to the hearing the clerk confirmed via email to both parties that the grounds of this appeal were that the entry should be deleted; she did so again when introducing the appeal at the hearing.

5. Mr Batty was appearing before the panel as both advocate and expert witness. Therefore, it was important to ascertain if there was a success related fee involved and, if so, whether its existence was compatible with his obligations to the tribunal as an expert. This question was raised in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC). Mr Batty confirmed that he was not being paid a conditional fee. He also declared that he understood and fully accepted that his duty was to the Tribunal in giving evidence, and that he would comply with this as well as the requirements of the professional body, regardless of whether or not the evidence supported his client's case.

6. To assist the panel the parties agreed the floor area before the hearing.

7. This statement of reasons is not and does not purport to be a verbatim record of the proceedings.

Background

8. The appeal property was a restaurant and premises situated on the Riversway complex in Preston, close to a cinema, supermarket, car dealerships and other fast-food restaurants. It was built in 1993 and measured 318.7m^2 measured according to Gross Internal Area (GIA). The property entered the 2017 rating list with effect from 1 April 2017 with a rateable value of £76,000, based on a main space rate of £240/m^2.

9. The appeal property had, due to financial and operational reasons, ceased to operate as a restaurant, although the exact date of closure was not provided. As it was not in use, squatters and drug users used the building illegally, breaking through the boarding and shuttering to enter. The building suffered significant vandalism in March 2021. This was followed by a fire in July 2021. The appellant sold the property to Burger King on 27 June 2024. There was no scheme of works put in place by the appellant.

10. The appellant's representative contended that, as at the material date, the appeal property was not capable of beneficial occupation and should be taken out of the rating list. He stated in particular that no insurance could be obtained, there were no prospective tenants because of the poor state of the property, and the property would in all probability be demolished.

11. The repair cost survey provided by the appellant indicated costs of up to £197,714, although that was at August 2024 values, and some of those repairs would fall to the tenant. The valuation officer's analysis determined the total costs adjusted to the AVD to be £130,471.17, plus professional fees. Mr Batty did not dispute this figure.

Preliminary issue

12. The appellant had commissioned a report on the costs of repair which Mr Batty had submitted to the Tribunal and the valuation officer on 19 September. On 14 October 2024 the valuation officer's representative responded with their analysis of those costs. Mr Batty stated that he was disappointed with the conduct of the Valuation Office Agency (VOA) throughout this matter. The case was originally raised as a hardship case in 2022 and as such it should have been dealt with in eight weeks. Mr Batty had visited the appeal property three times, during which period no VOA officer had inspected the appeal property; he considered it 'disrespectful' for the valuation officer to submit evidence on a property her officers had not visited. Mr Batty opined that the valuation officer was trying to discredit the quantity surveyor's report. Mr Jones confirmed that a colleague had visited the appeal property on 17 October 2024, after the new owner had purchased the property and commenced refurbishment works.

13. Mr Duffield had sent a summary of the spreadsheet comments along with Mr Jones' Statement of Truth the day before the hearing and Mr Batty objected to the admission of those comments. The panel allowed the evidence as it was not new and there was no prejudice to the appellant, with the original, full document having been received four weeks previously.

Relevant Law

14. The statutory definition of a hereditament is contained within section 64 of the Local Government Finance Act 1988. A hereditament is, by virtue of Section 115(1) of the General Rate Act 1967 a "…property which is or may become liable to a rate, being a unit of such property which is or would fall to be, shown as a separate item in the valuation list"

15. Paragraph 2 of Schedule 6 to the Local Government Finance Act 1988 contained the statutory hypothesis for determining the rateable value of a non-domestic hereditament. This provides that provides that:

    (1) The rateable value of a non-domestic hereditament property, none of which consists of domestic property and none of which is exempt from local non-domestic rating, shall be taken to be an amount equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year based on these three assumptions:

    (a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;

    (b) the second assumption is that immediately before the tenancy begins the hereditament is in a state of reasonable repair, but excluding from this assumption any repairs which a reasonable landlord would consider uneconomic;

    (c) the third assumption is that the tenant undertakes to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the hereditament in a state to command the rent mentioned above.

16. Although the rateable value is determined having regard to the antecedent valuation date (1 April 2015), the valuation must reflect the physical facts relating to the subject property and its locality as at the material date. In this appeal the material day was 1 April 2021, the date from which the appellant sought the deletion of the appeal property's entry from the valuation list. The panel noted that the fire in July 2021 was after the material date.

17. Schedule 6, Paragraph 2 of the Local Government Finance Act 1988:

(6) Where the rateable value is determined with a view to making an alteration to a list which has been compiled (whether or not it is still in force) the matters mentioned in sub-paragraph (7) below shall be taken to be as they are assumed to be on the material day.

(7) The matters are-

(a) matters affecting the physical state or physical enjoyment of the hereditament,
(b) the mode or category of occupation of the hereditament,
(c) …..
(cc) …..

(d) matters affecting the physical state of the locality in which the hereditament is situated or which, though not affecting the physical state of the locality, are nonetheless physically manifest there, and
(e) the use or occupation of other premises situated in the locality of the hereditament.

(8A) For the purposes of this paragraph the state of repair of a hereditament at any time relevant for the purposes of a list shall be assumed to be the state of repair in which, under sub-paragraph (1) above, it is assumed to be immediately before the assumed tenancy begins.

18. Also presented in evidence were extracts of, and references to

Civil Aviation Authority v *Langford (VO) and Camden BC* [1980] RA (369),
Thomas & Davies v *Denly (VO)* [2014] UKUT 0146 (LC) and
Princes St Ltd (Ipswich) v *Bond* (VO) [2002] RA 212.

Discussion

19. The panel considered the rating hypothesis and understood that, if the repairs required could be considered economic for the landlord to undertake, a property would be valued according to the statutory approach even if incapable of beneficial occupation under its current state. If the repair works were uneconomic for the landlord to undertake, but the premises were still capable of beneficial occupation, the rating hypothesis would assume that the landlord would be prepared to accept a lower rent in lieu of undertaking the repairs. The rating list entry would only be deleted if the repairs could not be rectified economically, and the property was incapable of beneficial occupation

20. Mr Batty had given evidence that, in order to access the empty property, it had been necessary to remove steel shutters; he stated that the property had no electricity, there was glass everywhere and water running down the walls. The panel did not doubt Mr Batty's statements but the evidence before the panel did not suggest that the property was so derelict that it was incapable of being a hereditament, and the appellant had not undertaken any repair works. The photographs showed a recognisable kitchen and bathroom, and the exterior structure appeared reasonably sound. The panel noted that, despite Mr Batty's expectations of demolition, the property had been sold recently and would soon re-open as a fast-food restaurant.

21. The panel therefore considered the question of whether the hypothetical landlord would consider the repairs economic to carry out. According to the VOA's records the appeal property had been let in March 2018 on a three-year FRI lease at a rent of £72,500 per annum. Making an adjustment of plus 10% to reflect fit-out, the rent analysed to £250.24/m^2.

22. The valuation officer had provided comparable rental evidence of similar fast-food restaurants nearby. KFC was just across the road, albeit the appellant's representative stated that the position of KFC was superior. The rent on this property was reviewed in May 2012, 10 years into a 15-year lease. At the open market review the rent for this slightly smaller property was agreed at £125,000 per annum. With the same 10% added for fit-out the rent analyses to £523.11/m^2.

23. Two examples were provided from Deepdale, a different retail park approximately 2 miles away. The analysed rents for Frankie and Benny's and Nando's were £374.87/m^2 and £360.46/m^2 respectively. The appellant's representative did not dispute the adjustments made to reach the rental value per metre^2, nor did he suggest any alternative comparators.

24. The panel considered the schedule of repair costs, and the comments added by the valuation officer. Apart from the adjustment back to AVD values, the repairs had been grouped according to whether they should be the responsibility of the landlord or the tenant. Mr Jones explained that he had been looking for what would be required to return the property to a lettable state rather than improvements. He added that he had accepted the statements about some of the damage even though there was no evidence.

25. Mr Batty was aggrieved that the VOA had not sent any officers to inspect the property prior to the commencement of the works by the current owner, arguing that any reductions and amendments to the costings were being made on the basis of assumptions. However, he did not argue any specific adjustments made by Mr Jones, although he maintained that he believed the overall costs of repair to be uneconomic.

26. Based on the comparable rental evidence above the valuation officer had provided hypothetical rental bids. A fifteen-year term was the most commonly found, and an assumption was made that the hypothetical landlord would offset repair costs via a landlord capital contribution or undertake works themselves. The hypothetical bid also included one year rent free, and three months disregarded as standard for fit-out. The landlord's capital contribution was assumed at an amount of £200,000 (based on the estimates provided by the appellant), amortised over the 15-year lease term. The result was an annual rent of £75,241, a rate of £259.70/m^2. The panel noted the current rate of £240/m^2 and considered that this did not seem unreasonable, observing that, if the repairs cost somewhere between £145,000 and £200,000, a landlord could recoup the full cost in two to three years based on £72,500, the last rent payable.

27. The valuation officer contended that, based on the estimated and assumed costs of repairs a hypothetical landlord would consider it economically reasonable to undertake the repairs necessary to bring the property back to a lettable state.

28. Persuaded of the reasonableness of the above model, the panel went on to consider the local property market. Although it noted the appellant's belief that there was no market for such a property in a state of disrepair, and that demolition was the likely outcome, this was not borne out by events. There was no evidence before it to suggest a lack of buoyancy, and, although Mr Batty argued that the location was inferior compared to some of the other restaurants, the panel was not persuaded that there was a significant disadvantage. The panel considered that Burger King's recent purchase of the appeal property supported this view.

Disposal

29. In view of the above findings and conclusions, the Tribunal Panel was satisfied that the subject property was capable of beneficial occupation on the material day and that the hypothetical landlord would consider the costs of repairs reasonably economic to undertake. The appeal was therefore dismissed.

30 Amended decision in accordance with Regulation 39 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 due to a clerical error. Paragraph 8 is amended to correct the description of the restaurant: the erroneous reference to it being a 'drive-thru' was removed.

Date issued to parties: 6 December 2024

Date re-issued to parties: 16 January 2025

Right of further appeal

Any party who is aggrieved by the Tribunal's decision, and who appeared or was represented at the hearing, has the right of appeal to the Upper Tribunal (Lands Chamber). Any such appeal should be made within four weeks of the date of this decision notice (original version).
